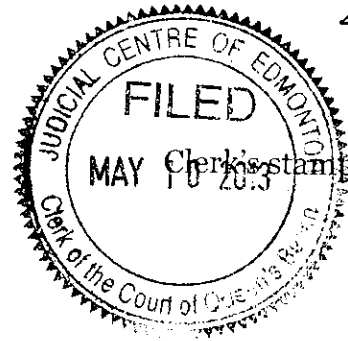


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COURT FILE NUMBER:

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE OF EDMONTON

PLAINTIFF: JUSTIN CALDWELL SOMERS

DEFENDANTS: STEVE MANCINI, TRAVOR JEROME, DYLAN ROSS, TYSAN LAING, JERRAD SUTHERLAND, CO KALON, JOHN DOE #1, JOHN DOE #2, JOHN DOE #3, JOHN DOE #4, JOHN DOE #5 and HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA

STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:

ENGEL LAW OFFICE
Barristers and Solicitors
#200, 10209 – 97 Street
Edmonton, AB T5J 0L6
Phone (780) 448-3639
Fax: (780) 448-4924
Attention: Erika Norheim
File No: 4835

NOTICE TO DEFENDANTS

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Statement of facts relied on:

1. The Plaintiff, Justin Caldwell Somers, currently resides at Alberta Hospital in the City of Edmonton, in the Province of Alberta. On May 11, 2013, the Plaintiff was an inmate of the Edmonton Remand Centre (the "ERC") who was imprisoned solely for the purposes reflected in s. 515(10) of the *Criminal Code*, R.S. 1985, c. C-46, and was presumed by law to be innocent of having committed any offence.

2. At all material times:

- (a) the Defendants Steve Mancini, Trevor Jerome, Ross, Tysan Laing, Jerrad Sutherland, CO Kalon, John Doe #1, John Doe #2, John Doe #3, John Doe #4, John Doe #5 (collectively, the ERC Staff) were employees of Her Majesty the Queen in Right of Alberta (the "Crown") at the ERC and acting under the direction and control of the Crown and in the purported performance of their employment duties, and
- (c) As a result of the negligence of the Crown, the ERC housed more inmates than it could reasonably accommodate.

3. The identities of John Doe #1, John Doe #2, John Doe #3, John Doe #4 and John Doe #5, as well as the first name of CO Kalon, are presently unknown to the Plaintiff.

4. By virtue of having imprisoned the Plaintiff or having undertaken employment at the ERC, as the case may be, the Defendants, or any one or more of them, were entrusted with certain obligations and responsibilities, and owed a duty of care to the Plaintiff, including a fiduciary duty, which duty included the following obligations:

- (a) to ensure that the Plaintiff was safe both in mind and body and treated in a humane manner;
- (b) to provide timely and appropriate medical care for the Plaintiff;
- (c) to provide reasonable and appropriate housing for the Plaintiff;
- (d) to ensure that the Plaintiff has access to media, entertainment, reading materials of his choosing, recreational activities, exercise facilities, fresh air and clean clothing and bedding;
- (e) to protect the Plaintiff's rights pursuant to the *Canadian Charter of Rights and Freedoms* (the "Charter") including without limitation:
 - i. the protection of his inherent human dignity and to respect the Plaintiff's autonomy over his own body;
 - ii. the right to fresh air or otherwise appropriate air to breathe;
 - iii. the right to privacy; and
 - iv. the Plaintiff's freedom from interference with fundamental personal choices;
- (f) to adhere to the United Nations *Standard Minimum Rules for the Treatment of Prisoners*, principles of fundamental justice, the *Corrections Act* and all regulations enacted thereunder.

5. The Plaintiff was admitted to the ERC on or about May 6, 2011. Upon his admission, the Plaintiff was interviewed by a nurse, Nicole Sorrell, employed by the Crown who, after assessing the Plaintiff, recommended that he be housed and exercised alone on a unit for inmates with mental health issues until he could be assessed by a psychiatrist. The Plaintiff was subsequently interviewed by registered psychologist Neil Adesky, who also confirmed that the Plaintiff ought to be housed alone. No medical treatment was provided to the Plaintiff despite the fact that he exhibited indicia of serious mental illness and alcohol withdrawal.

6. Despite the recommendations and instruction provided by health care staff, John Doe #1 elected to house the Plaintiff in holding tank #10 ("Tank 10") in the A & D area of the ERC. Tank 10 did not have any access to toilet or water, and was known by the Defendants to be unsanitary and contaminated by human waste and other bodily fluids. As a result, the Plaintiff was entirely dependent upon ERC Staff to provide him with water, food and access to a toilet. The Crown knew or ought to have known that it was difficult for inmates housed in Tank 10 to communicate any concerns to staff, and failed to implement reasonable procedures for staff to monitor the wellbeing of inmates housed in Tank 10.

7. Throughout the time the Plaintiff was held in Tank 10, he was deprived of reasonable access to food, water and toilet facilities despite his requests. The Plaintiff was suffering from hallucinations and delusions which were exacerbated by alcohol withdrawal and became unable to tell right from wrong. Despite the Plaintiff's unstable condition having been readily apparent to ERC staff, no steps were taken to ensure that the Plaintiff was provided with medical treatment. Throughout the time that the Plaintiff was housed in Tank 10, the holding cell was monitored by CCTV and ERC Staff were able to observe the activities inside the holding cell.

8. On May 11, 2011, despite the recommendations and instruction that the Plaintiff be housed alone, John Doe #1, John Doe #2 or Kalon elected to house another inmate, Barry Stewart, in the same holding tank as the Plaintiff. As a result of the Plaintiff's untreated medical condition and the conditions of his incarceration, the Plaintiff's delusions caused him to perceive green smoke to be emanating from Mr. Stewart's body and believed that Mr. Stewart was eating human heads.

9. The Defendants or any of them were responsible for monitoring the inmates in the A & D area of the ERC but, in breach of their duties to the inmates in their custody including the Plaintiff, failed to provide reasonable supervision of, or assistance to, the Plaintiff.

10. At approximately 4:42am on May 12, 2011, the Plaintiff stood on the bench of the "holding tank", jumped and landed on Stewart's head 26 times while he was sleeping on the floor. This occurred over a period of approximately 8 minutes, during which time the ERC Staff failed to take any action to stop the Plaintiff from harming Mr. Stewart. Mr. Stewart died as a result of the Plaintiff's actions.

11. The Plaintiff was charged with second degree murder as a result of Mr. Stewart's death (the "Charge"). The Plaintiff was incarcerated while he awaited trial on the Charge. He was initially housed on Unit 2D, during which time the only clothing he was permitted to wear was an uncomfortable, dress-like garment commonly referred to as a baby-doll.

12. While he was awaiting trial on the Charge, the Plaintiff broke his ankle. Despite his requests for medical attention, the Defendants failed to arrange for the Plaintiff to be seen by a physician for approximately two weeks. Due to the unsanitary conditions of the ERC, the Plaintiff contracted an infectious illness which caused discomfort. The Defendants failed to provide reasonable treatment to the Plaintiff with respect to this condition.

13. Ultimately, the Plaintiff was found by the trial judge to have been not criminally responsible for the death of Mr. Stewart, at which time he was transferred to Alberta Hospital Edmonton where he remains confined.

14. The Plaintiff incurred expenses as a result of having to defend the Charge.

15. The Plaintiff has experienced severe mental anguish and mental distress as a result of his role in causing the death of Mr. Stewart, as well as a result of the conditions of his incarceration. Further, the negligence on the part of the defendant has resulted in the Plaintiff being deprived of his liberty.

16. The death of Mr. Stewart, and the resulting consequences for the Plaintiff, were the result of the negligence of the defendants as outlined above. Further particulars of the negligence on the part of Crown include, without limitation:

- a. incarcerating more individuals at the ERC than the ERC had the capacity to reasonably accommodate;
- b. failing to provide reasonable accommodation to the Plaintiff;
- c. failing to provide reasonable medical attention to the Plaintiff;
- d. failing to establish a classification process which met the requirements of s. 11 of the *Corrections Act* and s. 9.1 of the *Correctional Institution*, and otherwise failing to enact and implement reasonable procedures for assigning inmates to a housing placement based on the assessments undertaken;
- e. failing to enact and implement reasonable procedures for monitoring inmates housed in Tank 10 and responding to inmate needs;
- f. failing to adequately train and supervise ERC staff; and

- g. permitting Barry Stewart to be placed in the Plaintiff's cell without regard to other placement options.

17. The Defendants or any of them displayed reckless indifference to the welfare of the inmates in their care, including the Plaintiff, warranting an award of aggravated and punitive damages.

18. The conditions under which the Plaintiff was held in custody constituted an unreasonable deprivation of his residual liberty interests, a breach of the Plaintiff's right to security of the person, and cruel and unusual treatment. As a result, the Plaintiff's rights guaranteed by s. 7 and s. 12 of the *Charter* were infringed, and the Plaintiff requests a remedy under s. 24 of the *Charter*.

19. The Plaintiff proposes that the trial of this action be held in the Law Courts Building, in the City of Edmonton, in the Province of Alberta.

20. The Plaintiff anticipates that the trial of this matter will not require more than 25 days.

Remedy sought:

The Plaintiff requests:

- (a) Damages against the Defendants, including aggravated and punitive damages, in the amount of \$500,000
- (b) Such other relief as this Honourable Court considers appropriate and just to provide a meaningful remedy to the Plaintiff pursuant to s. 24(1) of the *Charter*;
- (c) Costs of this action on a full indemnity basis;
- (d) Interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1; and
- (e) Such further or other relief as this Honourable Court deems just.

DATED at the City of Edmonton, in the Province of Alberta, this 10th day of May, 2013, AND DELIVERED BY ENGEL LAW OFFICE, solicitors for the Plaintiff, whose address for service is in care of his said solicitors at 200, 10209 – 97th Street, Edmonton, Alberta T5J 0L6.

NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff against you.